

Before the
Federal Communications Commission
Washington, D.C. 20554

| | | |
|--------------------|---|-------------------------|
| In the Matter of |) | File No.: EB-10-SE-018 |
| |) | |
| Elgato Systems LLC |) | Acct. No.: 201232100029 |
| |) | |
| |) | FRN: 0021841176 |

ORDER

Adopted: July 12, 2012**Released: July 13, 2012**

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) and Elgato Systems LLC (Elgato). The Consent Decree resolves and terminates the Bureau's investigation into Elgato's compliance with Section 302(b) of the Communications Act of 1934, as amended (Act),¹ and Sections 2.803 and 15.19 of the Commission's rules (Rules)² pertaining to the marketing of television broadcast receivers.

2. The Bureau and Elgato have negotiated the Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated herein by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether Elgato possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Act,³ and Sections 0.111 and 0.311 of the Rules,⁴ the Consent Decree attached to this Order **IS ADOPTED**.

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. §§ 2.803, 15.19.

³ 47 U.S.C. § 154(i).

⁴ 47 C.F.R. §§ 0.111, 0.311.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Adam Steinberg, Vice President of Marketing, Elgato Systems LLC, 900 Kearney Street, San Francisco, CA 94133, and to Jason Rademacher, Esq., counsel for Elgato Systems LLC, Dow Lohnes PLLC, 1200 New Hampshire Avenue, N.W., Suite 800, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

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CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission and Elgato Systems LLC, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into possible violations of Section 302(b) of the Communications Act of 1934, as amended,¹ and Sections 2.803 and 15.19 of the Commission's rules² pertaining to the marketing of a television broadcast receiver model.

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (d) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Elgato is subject by virtue of its business activities, including but not limited to, the Equipment Marketing Rules.
 - (e) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (f) "Compliance Plan" means the compliance obligations, programs and procedures described in this Consent Decree at paragraph 9.
 - (g) "Covered Employees" means all employees and agents of Elgato who perform, or supervise, oversee, or manage the performance of, duties that relate to Elgato's responsibilities under the Equipment Marketing Rules.

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. §§ 2.803, 15.19.

- (h) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (i) “Elgato” means Elgato Systems LLC, and its predecessors-in-interest and successors-in-interest.
- (j) “Equipment Marketing Rules” means Section 302(b) of the Act³ and Sections 2.803 and 15.19 of the Rules⁴ and other Communications Laws governing the marketing of radio frequency devices within the United States and its territories.
- (k) “Investigation” means the investigation described in the Bureau’s March 18, 2010 letter of inquiry⁵ regarding whether the marketing of certain digital television receivers by Elgato complies with Section 2.803 and Part 15 of the Commission’s Rules.
- (l) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by Elgato to implement the Compliance Plan.
- (m) “Parties” means Elgato and the Bureau, each of which is a “Party.”
- (n) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. Pursuant to Section 302(b) of the Act⁶ and Section 2.803 of the Rules,⁷ certain unintentional radiators⁸ may not be marketed⁹ in the United States unless the devices comply with the applicable technical standards as well as the administrative requirements relating to equipment labeling and consumer disclosure. Elgato markets a broadcast television receiver,¹⁰ the EyeTV One television tuner model, that is designed to connect directly to a television antenna and/or an incoming cable line and to a network router or computer for the purpose of delivering digital television to the monitor of a personal computer. As an unintentional radiator, this device is subject to authorization via the Commission’s equipment verification procedures.¹¹ Devices subject to the verification procedures must,

³ 47 U.S.C. § 302a(b).

⁴ 47 C.F.R. §§ 2.803, 15.19.

⁵ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Adam Steinberg, Director, Product Line Management, Elgato Systems LLC (Mar. 18, 2010) (on file in EB-10-SE-018).

⁶ 47 U.S.C. § 302a(b).

⁷ 47 C.F.R. § 2.803.

⁸ Section 15.3(z) of the Rules defines an “unintentional radiator” as a “device that intentionally generates radio frequency energy for use within the device, or that sends radio frequency signals by conduction to associated equipment via connecting wiring, but which is not intended to emit RF energy by radiation or induction.” *Id.* § 15.3(z).

⁹ Section 2.803(e)(4) of the Rules defines “marketing” as the “sale or lease, or offering for sale or lease, including advertising for sale or lease, or importation, shipment, or distribution for the purpose of selling or leasing or offering for sale or lease.” *Id.* § 2.803(e)(4).

¹⁰ *Id.* § 15.3(w) (defining a television broadcast receiver as a “device designed to receive television pictures that are broadcast simultaneously with sound on the television channels authorized under part 73 of this chapter”).

¹¹ *Id.* § 15.101.

among other requirements, be labeled in accordance with Section 15.19 of the Rules.¹² Under Section 15.19(a)(1) of the Rules,¹³ receivers operating in the broadcast services must be labeled, in a conspicuous location, with the following statement: “This device complies with part 15 of the FCC Rules. Operation is subject to the condition that this device does not cause harmful interference.”¹⁴ However, under Section 15.19(a)(5) of the Rules,¹⁵ when a device subject to verification is so small that it is not practicable to fully label it, it may be labeled only with a “unique identifier,”¹⁶ provided that the remaining required information is “placed in a prominent location in the instruction manual or pamphlet supplied to the user” or “on the container in which the device is marketed.”¹⁷ As the importer of the device, Elgato is responsible for the device’s compliance with the applicable technical standards and administrative requirements, including Section 15.19.¹⁸

3. On March 18, 2010, the Bureau’s Spectrum Enforcement Division issued a letter of inquiry (LOI) to Elgato,¹⁹ directing the company to submit a sworn written response to a series of questions relating to Elgato’s manufacture, importation, and marketing of digital television receivers. Elgato responded to the LOI on April 19, 2010 (LOI Response).²⁰ In its LOI Response, Elgato reported that it imports and markets only one digital television receiver, the EyeTV One television tuner model, and provided documentation demonstrating that the model had been properly verified before marketing.²¹ Elgato also provided photographs demonstrating that the model is smaller than the palm of a hand and that the label affixed to the model displayed a unique identifier.²² Elgato acknowledged that the EyeTV One television tuner model devices did not include the remaining information required by Section 15.19(a)(1), either on the label, or in the instruction manual or on the container in which the device was sold.²³ However, Elgato reported that, as of the date of its LOI Response, it had taken specific remedial measures, including labeling the EyeTV One television tuner model devices in accordance with Section 15.19(a)(5), updating the online instruction manual, and also posting on its website a frequently asked

¹² *Id.* § 15.19.

¹³ *Id.* § 15.19(a)(1).

¹⁴ *Id.*

¹⁵ *Id.* § 15.19(a)(5); *see also id.* § 2.954 (stating that “[d]evices subject to verification shall be uniquely identified by the person responsible for marketing or importing the equipment within the United States. However, the identification shall not be of a format which could be confused with the FCC Identification required on certified, notified or type accepted equipment. The importer or manufacturer shall maintain adequate identification records to facilitate positive identification for each verified device.”).

¹⁶ 47 C.F.R. § 15.19(a)(5); *see also id.* § 2.954 (requiring that devices subject only to verification be “uniquely identified”).

¹⁷ 47 C.F.R. § 15.19(a)(5).

¹⁸ *See id.* § 2.909(b) (defining the “responsible party” for equipment subject to verification as the equipment manufacturer, the importer, or if the device is modified by any party not working under the authority of the responsible party, the party performing the modification).

¹⁹ *See supra* note 5.

²⁰ *See* Letter from Adam Steinberg, Vice President of Marketing, Elgato Systems LLC, to Nissa Laughner, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau (Apr. 19, 2010) (on file in EB-10-SE-018).

²¹ *Id.* at 10 and Exhibit 3.

²² *Id.* at 11-12.

²³ *Id.* at 12.

question that included the information required by Section 15.19(a).²⁴ The Bureau and Elgato executed tolling agreements to toll the statute of limitations.²⁵

III. TERMS OF AGREEMENT

4. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order.

5. **Jurisdiction.** Elgato agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and that the Bureau has the authority to enter into and adopt this Consent Decree.

6. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

7. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, Elgato agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any new proceeding, formal or informal, or take any action on its own motion against Elgato concerning the matters that were the subject of the Investigation. The Bureau also agrees that in the absence of new material evidence it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Elgato with respect to Elgato's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

8. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Elgato shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that Elgato complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his/her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Equipment Marketing Rules prior to assuming his/her duties.

9. **Compliance Plan.** For purposes of settling the matters set forth herein, Elgato agrees that it shall within sixty (60) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and

²⁴ *Id.* at 12.

²⁵ *See, e.g.*, Tolling Agreement Extension, File No. EB-10-SE-018, executed by and between Ricardo M. Durham, Senior Deputy Division Chief, on behalf of John D. Poutasse, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, and Adam Steinberg, Vice President of Marketing, Elgato Systems LLC (Apr. 9, 2012).

conditions of this Consent Decree. With respect to the Equipment Marketing Rules, Elgato shall implement the following procedures:

- (a) **Operating Procedures on Equipment Marketing.** Within sixty (60) calendar days after the Effective Date, Elgato shall establish Operating Procedures that all Covered Employees must follow to help ensure Elgato's compliance with the Equipment Marketing Rules. Elgato's Operating Procedures shall include internal procedures and policies specifically designed to ensure that all television broadcast receivers and other radio frequency devices marketed by Elgato have been properly authorized (via the certification, verification, or declaration of conformity procedures, as applicable), comply with applicable technical standards, and comply with the applicable administrative requirements relating to equipment labeling and consumer disclosure.
- (b) **Compliance Manual.** Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Equipment Marketing Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure Elgato's compliance with the Equipment Marketing Rules. Elgato shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and complete. Elgato shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** Elgato shall establish and implement a Compliance Training Program on compliance with the Equipment Marketing Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of Elgato's obligation to report any noncompliance with the Equipment Marketing Rules under paragraph 10 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within sixty (60) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the Effective Date shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. Elgato shall repeat the compliance training on an annual basis and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.
- (d) **Remedial Measures.** Elgato agrees to prominently display and maintain a link on its website that provides consumers the information required by Section 15.19(a) of the Rules.

10. **Reporting Noncompliance.** Elgato shall report any noncompliance with the Equipment Marketing Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of (i) each instance of noncompliance; (ii) the steps that Elgato has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that Elgato has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, Room 3-C366, 445 12th Street, S.W. Washington, D.C. 20554,

with a copy submitted electronically to Nissa Laughner at Nissa.Laughner@fcc.gov and to Ricardo Durham at Ricardo.Durham@fcc.gov.

11. **Compliance Reports.** Elgato shall file Compliance Reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, and twenty-four (24) months after the Effective Date.

- (a) Each compliance report shall include a detailed description of Elgato's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Equipment Marketing Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Elgato, stating that the Compliance Officer has personal knowledge that Elgato (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 10 hereof.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and must comply with Section 1.16 of the Rules²⁶ and be subscribed to as true under penalty of perjury in substantially the form set forth therein.
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Elgato, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully (i) each instance of noncompliance; (ii) the steps that Elgato has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that Elgato has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to Nissa.Laughner@fcc.gov and to Ricardo Durham at Ricardo.Durham@fcc.gov.

12. **Termination Date.** Unless stated otherwise, the requirements of paragraphs 8 through 11 of this Consent Decree shall expire twenty-four (24) months after the Effective Date.

13. **Voluntary Contribution.** Elgato agrees that it will make a voluntary contribution to the United States Treasury in the amount of two thousand eight hundred dollars (\$2,800) within thirty (30) calendar days after the Effective Date. Elgato shall also send electronic notification of payment to Nissa Laughner at Nissa.Laughner@fcc.gov, Ricardo Durham at Ricardo.Durham@fcc.gov, and Samantha Peoples at Sam.Peoples@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁷ When completing the FCC Form 159, enter the Account Number in block number

²⁶ 47 C.F.R. § 1.16.

²⁷ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

14. **Waivers.** Elgato waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order as defined herein. Elgato shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Elgato nor the Commission shall contest the validity of the Consent Decree or of the Adopting Order, and Elgato shall waive any statutory right to a trial *de novo*. Elgato hereby agrees to waive any claims it may have under the Equal Access to Justice Act,²⁸ relating to the matters addressed in this Consent Decree.

15. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

16. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which Elgato does not expressly consent) that provision will be superseded by such Rule or Commission order.

17. **Successors and Assigns.** Elgato agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

18. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal

²⁸ Equal Access to Justice Act, Pub L. No. 96-481, 94 Stat. 2325 (1980) (codified at 5 U.S.C. § 504); *see also* 47 C.F.R. §§ 1.1501-1.1530.

finding or determination regarding any compliance or noncompliance with the requirements of the Communications Laws.

19. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

20. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

21. **Authorized Representative.** The individual signing this Consent Decree on behalf of Elgato represents and warrants that he is authorized by Elgato to execute this Consent Decree and to bind Elgato to the obligations set forth herein. The FCC signatory represents that he is signing this Consent Decree in his official capacity and that he is authorized to execute this Consent Decree.

22. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

John D. Poutasse
Chief
Spectrum Enforcement Division
Enforcement Bureau

Date

Adam Steinberg
Vice President of Marketing
Elgato Systems LLC

Date